

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

STATE OF NEW YORK et al.,

Plaintiffs,

v.

NATIONAL SCIENCE FOUNDATION; BRIAN  
STONE, in his official capacity as Acting Director  
of the National Science Foundation,

Defendants.

Case No. 25-4452

**DECLARATION OF COLLEEN K. FAHERTY**

COLLEEN KELLY FAHERTY, an attorney duly admitted to practice before the Courts of this State, does hereby state the following under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I am Colleen Kelly Faherty, Special Counsel in the Office of the Attorney General for the State of New York, who appears on behalf of the State of New York in this action.

2. I submit this declaration in further support of Plaintiff States' Motion for a Preliminary Injunction pursuant to Federal Rule of Civil Procedure 65. The facts set forth herein are based upon my personal knowledge and/or a review of the files in my possession.

3. Since the filing of this action, many Plaintiff States have received notices of award from NSF that contain the following language:

Recipient is hereby notified of proceedings and resulting stay in Case No. 1:25-cv-11231 in the United States District Court for the District of Massachusetts. In accordance with the court's order dated May 19, 2025, NSF is temporarily staying effectuation of Policy Notice: Implementation of Standard 15% Indirect Cost Rate

(NSF 25-034). If a court decision permits application of the policy, NSF may unilaterally modify the terms and conditions of this award to impose the Award Specific FATC set forth below, which shall be applicable to the entire duration of the award. NSF may take such unilateral action by notifying the recipient via email or other written communication. In no event shall NSF unilaterally modify this award to impose an indirect cost rate limitation of less than 15 percent of the modified total direct cost base (MTDC).

If a court decision permits application of the policy, in accordance with Policy Notice: Implementation of Standard 15% Indirect Cost Rate (NSF 25-034), reimbursement of indirect costs for this award must not exceed 15 percent of the modified total direct cost base (MTDC), regardless of whether the recipient has a current Federal negotiated indirect cost rate. The recipient must use a rate no greater than 15 percent of MTDC, as defined in 2 CFR § 200.1, for the life of the award, including the award period prior to notification of the application of this term. Excess indirect costs charged to an NSF grant due to use of an incorrect rate will be disallowed. This term and condition supersedes any previously submitted and/or approved budget.

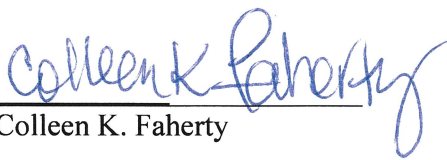
4. While NSF originally agreed to pause implementation of the Indirect Cost Directive through June 13, 2025, the date of the summary judgment hearing in the *AAU* case in the District of Massachusetts, NSF later agreed to extend that pause through the date of any summary judgment decision in that case. *See Ass'n of Am. Univs. v. Nat'l Sci. Found.*, No. 25 Civ. 11231, ECF No. 73 (D. Mass. June 18, 2025).

5. I have attached hereto this affirmation true and correct copies of the following documents, as noted herein.

6. Attached hereto as Exhibit 1 is a true and correct copy of the declaration of Dr. Erica Benson, Executive Director of the Office of Research and Sponsored Programs at the University of Wisconsin – Eau Claire.

7. Attached hereto as Exhibit 2 is a true and correct copy of the declaration of Kurt McMillen, Interim Associate Vice Chancellor for Research Administration at the University of Wisconsin-Madison.

Dated: New York, New York  
June 23, 2025

  
Colleen K. Faherty